

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DAMIEN HARRIS,

Plaintiff,

v.

MICHAEL BOONE, SCOTT JACKSON,  
KENNETH LUNDQUIST, LORELI  
THOMPSON

Defendants.

No. C12-6008 RBL/KLS

**REPORT AND RECOMMENDATION**  
**Noted For: August 22, 2014**

Before the Court is Plaintiff's voluntary motion to dismiss. Dkt. 33. Defendants do not object to Plaintiff's motion to dismiss the action without prejudice. Dkt. 34, 35, and 36. The undersigned recommends that the motion be granted and the case dismissed without prejudice.

**BACKGROUND**

Plaintiff, Damien Harris, filed his original complaint in this 42 U.S.C. § 1983 case on November 26, 2012. Dkt. 1. Defendants filed answers in November and December of 2012. Dkt. 7, 12, and 13. On December 10, 2012, Mr. Harris filed a motion to stay the action so that he could exhaust his claims in state court. Dkt. 11. The Court granted Mr. Harris' motion and the case remained stayed until the undersigned ordered Mr. Harris to file a status report. Dkt. 29. Mr. Harris filed a report in March of 2014. Dkt. 30. In April of 2014 Mr. Harris

1 reported that state proceedings were completed and he asked that the stay continue while he filed  
2 a federal habeas corpus action. Dkt. 31. The undersigned denied that motion explaining that Mr.  
3 Harris' cause of action would not accrue until Mr. Harris receives relief through habeas corpus.  
4 Dkt. 32. Mr. Harris filed a motion to dismiss the action without prejudice. Dkt. 33. Defendants  
5 do not object. Dkt. 34, 35, and 36.

### 6 DISCUSSION

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8 Federal Rule of Civil Procedure Rule 41(a) governs the voluntary dismissal of an action  
9 in federal court. Rule 41(a)(2) provides that unless a plaintiff files a notice of dismissal before  
10 the opposing party serves either an answer or a motion for summary judgment, or the parties  
11 stipulate to the dismissal of the action, "[a]n action may be dismissed at the plaintiff's request  
12 only by court order, on terms that the court considers proper ...." Fed. R. Civ. P. § 41(a)(2). The  
13 decision to grant or deny a motion pursuant to Rule 41(a)(2) is within the sound discretion of the  
14 trial court and may be reviewed only for abuse of that discretion. *Sams v. Beech Aircraft Corp.*,  
15 625 F.2d 273, 277 (9th Cir.1980).  
16

17 A motion for voluntary dismissal pursuant to Rule 41(a)(2) should be granted unless a  
18 defendant can show that it will suffer some plain legal prejudice as a result of the dismissal.  
19 *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir.2001); *Stevedoring Services of America v. Armilla*  
20 *Intern. B.V.*, 889 F.2d 919, 921 (9th Cir.1989) (stating that the purpose of Rule 41(a)(2) is "to  
21 permit a plaintiff to dismiss an action without prejudice so long as the defendant will not be  
22 prejudiced ... or unfairly affected by dismissal."). Rule 41 provides that orders that fail to  
23 specify whether dismissal is with or without prejudice are to be interpreted as dismissals without  
24 prejudice. Fed. R. Civ. P. 41(a)(2); *Hargis v. Foster*, 312 F.3d 404, 412 (9th Cir. 2002).  
25  
26 However, the rule gives the Court a broad grant of discretion and it "does not contain a

1 preference for one kind of dismissal or another.” *Hargis*, 312 F.3d at 412; 9 Charles Alan  
 2 Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE § 2367 (3d ed. 2007) (“if the  
 3 plaintiff either moves for dismissal without prejudice or fails to specify whether the request is for  
 4 dismissal with or without prejudice, the matter is left to the discretion of the court. The trial court  
 5 may grant a Rule 41(a) dismissal without prejudice or may require that the dismissal be with  
 6 prejudice.”).

7  
 8 In this defendants do not object to Mr. Harris’ request to dismiss the action without  
 9 prejudice. Therefore, the Court should grant Plaintiff’s motion to dismiss this matter without  
 10 prejudice. Dkt. 33.

### 11 WRITTEN OBJECTIONS

12 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
 13 Procedure, the parties shall have fourteen (14) days from service of this Report and  
 14 Recommendation to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections  
 15 will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140  
 16 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the  
 17 matter for consideration on **August 22, 2014**, as noted in the caption.  
 18

19 **DATED** this 7<sup>th</sup> day of August, 2014.

20  
 21   
 22 Karen L. Strombom  
 23 United States Magistrate Judge  
 24  
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